will not allow creditors or shareholders to be harassed, nor itself to be congested, by improper proceedings.

The points to be decided on this summons are whether the procedure is in order and whether the appointment of the applicant as liquidator ought to be confirmed.

The procedure was misconceived. There is no winding-up by or in the Court and no pending proceeding in which the summons in chambers could properly issue.

The application was misconceived. There is no power to confirm the appointment of a liquidator in these circumstances.

Even if there were such a power, this applicant has put himself into so false a position by ignoring the law that his appointment ought not to be confirmed.

I therefore refused the application and ordered the costs to be paid by the applicant personally, without recourse to the assets of the company until all the creditors of the company have been paid in full.

Application refused.

PUBLIC PROSECUTOR v. HO CHEONG BENG.

[App. Crim. Juris. (Abbott, J.) August 17, 1950]

[Malacca — Criminal Appeal No. 14 of 1950]

Opium and Chandu Proclamation, s. 3 — Possession — Opium found in a motor car.

This was an appeal by the Crown against the acquittal of the respondent in that, at the conclusion of the case against him in the lower Court, the learned President of the Sessions Court held that the Crown had failed to establish a prima facie case against the respondent.

Held, that according to the circumstances of this case the learned President of the Sessions Court was correct in holding that no prima facie evidence of possession was made out against the respondent.

CRIMINAL APPEAL from the Sessions Court, Malacca.

Hugh Shepherd (D.P.P.) for the appellant.

R. H. V. Rintoul for the respondent.

Abbott, J. : — This is an appeal by the Crown against the acquittal of the respondent in that, at the conclusion of the case against him in the lower Court, the learned President of the Sessions Court held that the Crown had failed to establish a *prima facie* case against the respondent.

The facts may shortly be summarised as follows. The respondent, at the material time, owned a motor car. On the day in question he was seen in that motor car being driven by another person in the direction of Alor Gajah. At Alor Gajah he descended from the car and it was driven by the other person, out of sight, into a side road. Customs officers searched the car and found, in the boot, a cement bag containing, hidden in the cement, a quantity of opium. The driver of the motor car had voluntarily unlocked the boot in order to facilitate the search. The Crown has submitted that, in law, the respondent was in possession of the opium by reason of the fact that he was using his own car, and in control, of it, throughout the material time.

Section 3 of the Opium and Chandu Proclamation makes the possession of opium an offence and assumes guilty possession on the part of the occupier of premises unless the occupier proves the contrary. The opium in this case was found, not in premises but, in a motor car — and there is thus no presumption, such as would shift the onus of proving innocent possession, that the respondent was in possession of the opium.

This Court is of opinion that the learned President of the Sessions Court was correct in holding that no *prima facie* evidence of possession was made out against the respondent.

The consideration of section 18 of the Opium and Chandu Proclamation does not therefore arise and this appeal must be, and is, dismissed.

Appeal dismissed.

WAGNER AND ANOR. v. SINGAM.

[App. Civ. Juris. (Taylor, J.) June 29, 1950]

[K. L. — Civil Appeal No. 5 of 1950]

Landlord and tenant — Control of Rent Ordinance, 1948, s. 13(i) — Tenant or any member of his family — Meaning of.

This was an appeal from an order of the Rent Assessment Board for Kuala Lumpur refusing an application by the landlords, who are trustees, for permission to apply to Court for ejectment of their tenant.

The facts are, briefly, that the tenant is a bachelor, employed by the Government, who have allotted to him official quarters in which he in fact resides, together with two "relatives" and four pupils; his married sister, with her husband and children, and also his mother, reside in the house rented from the landlords and the tenant frequently takes meals there.

Held, that for the purpose of the Control of Rent Ordinance, 1948, the family of a tenant is restricted to specified near relations. The respondent's sister and her children are not his family; they are the entirely separate family of his brother-in-law. The respondent's family, within the statute, consists of two persons only, his mother and himself and therefore the Board misdirected themselves on a point of law and that section 13(i) refers to alternative accommodation for the tenant.

Cases referred to:—

(1) *Skinner v. Geary* (1931) 2 K.B. at p. 560.

(2) *Foong Kooi v. Wong Ching* 1 M.L.R. 86; (1950) M.L.J. 159.

(3) *Teh Say Mooi v. Tan Chor Leng* 1 M.L.R. 42; (1950) M.L.J. 90.

CIVIL APPEAL from an order of the Rent Assessment Board for Kuala Lumpur.

E. A. S. Wagner for the appellants.

Respondent in person.

Taylor, J. : —This is an appeal from an order of the Rent Assessment Board for Kuala Lumpur refusing an application by the landlords, who are trustees, for permission to apply to Court for ejectment of their tenant.

The facts are, briefly, that the tenant is a bachelor, employed by the Government, who have allotted to him official quarters in which he in fact resides, together with two "relatives" and four pupils; his married sister, with her husband and children, and also his mother, reside in the house rented from the landlords and the tenant frequently takes meals there.

For the purpose of the ordinance the family of a tenant is restricted to specified near relations. The respondent's sister and her children are not his family; they are the entirely separate family of his brother-in-law. The respondent's family, within the statute, consists of two persons only, his mother and himself.

The application to the Board was founded on two grounds, that no member of the tenant's family lived in the house, and that in all the circumstances, the application was reasonable as other suitable accommodation, namely the Government quarters, was available for the tenant.

In his written defence the tenant did not allege that his mother was living in the landlords' house but the Board allowed him to adduce evidence that she was residing there at the date of the hearing. To admit this evidence was not unreasonable, but the Board do not appear to have considered the possibility of her having gone there at the last minute, merely for the purposes of the litigation. The mere fact that the mother was staying there for a few days with some of her other children, which was all that the evidence shewed, did not prove that she was in occupation within the meaning of section 13 (i).

In dealing with the second ground, the Board considered that the question before them was "whether the alternative accommodation was suitable for the respondent and fourteen other persons". They also attached importance to the evidence of a housing clerk who said that the Government would not deprive an officer of his quarters, by reason of the fact that he also had a private house, provided that full use was made of the quarters.

On the first point I am of opinion that the Board misdirected themselves on a point of law. Section 13 (i) refers to alternative accommodation for the tenant.

I entirely agree that in exercising their discretion the Board can properly take his dependents into consideration but they go too far when they require that the alternative accommodation should suffice for the independent family of his sister as well as for his pupils. I think also they misapplied, and gave undue weight to, the evidence regarding the Government regulations which are of doubtful relevance.

The fundamental principle of the ordinance is to prevent a man from being turned out of his home merely to make room for someone else who is able to pay a higher rent — *Skinner v. Geary*(1).

The contention of the tenant in this case really amounts to the proposition that a man can rent one house for a private boarding school with his mother as the matron, another for a nursing home with his sister as the matron, another for himself and so on and be a protected tenant of each and all. This proposition cannot be supported either by reason or authority.

I do not mean to say that no one can possibly be a protected tenant of more than one house at a time. In this country, where a man may have two wives and two separate families of children, he might genuinely occupy two houses concurrently. I do not say he would be protected in both. I leave that point entirely open until it is raised on appropriate facts.

This is not such a case. In my view, the Board would probably not have decided as they did had they taken what I consider to be the correct view of the law and I therefore allow the appeal and permit the landlords to bring their application before the appropriate Court for decision.

I must add that at the date of the hearing I was quite unaware of *Foong Kooi v. Wong Ching*(2) which was decided only a few days earlier and had not been reported. In that case it was held that no appeal lies from either the grant or the refusal of permission to apply for ejectment. This point was not raised before me. It was assumed or accepted that appeal lay, in

much the same way as, I gather, it had previously been accepted by the same learned Judge in *Teh Say Mooi v. Tan Chor Leng*[3]. Nothing in this judgment therefore can in anyway affect the view of the law expressed in *Foong Kooi's* case.

Appeal allowed.

CHIEW KEK SENG v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Thomson, J.) July 10, 1950]

[Ipoh — Criminal Appeal No. 47 of 1950]

Penal Code, s. 304A — High degree of rashness — Death of a cyclist — Sentence of imprisonment substituted for a fine.

The appellant in this case was charged with rashly driving a motor vehicle and thereby causing the death of a cyclist in contravention of section 304A of the Penal Code. He was convicted and sentenced to four months' rigorous imprisonment.

Held, that as the appellant acted not merely rashly but with a very high degree of rashness, his conviction must stand, but under the circumstances of the case a sentence of fine should be substituted for imprisonment. **Kuan Choon Hin v. Public Prosecutor** (1) distinguished.

Obiter dicta: "In the existing law relating to road traffic there is no provision enabling a Court to suspend the driving licence of a person who is convicted under section 304A of the Penal Code although there is such a power to suspend on conviction for the less serious offence of dangerous driving under section 4(3) of the Motor Vehicles (Driving Offences) Proclamation. This is a serious defect which so far as I am aware does not occur in the law of any other civilised country, and to my mind it calls for immediate remedy on the part of the Legislature."

Case referred to:—

(1) *Kuan Choon Hin v. Public Prosecutor* (1939) F.M.S.L.R. 199.

CRIMINAL APPEAL from the Magistrate's Court, Ipoh.

H. T. Ong for the appellant.

B. J. Jennings for the respondent.

The facts of the case appear sufficiently from the judgment.

Thomson, J.: — The appellant in this case was charged with rashly driving a motor vehicle and thereby causing the death of a cyclist in contravention of section 304A of the Penal Code. He was convicted and sentenced to four months' rigorous imprisonment. Against the conviction and sentence he has now appealed.

The learned Magistrate has set out his grounds for his decision with care and lucidity, and in spite of the very persuasive argument that has been addressed to me by Mr. H. T. Ong, I find myself unable to differ from the conclusions at which he has arrived as to the appellant's guilt.

The facts of the case present little difficulty. The appellant was the driver of a 'Hillman' motor car which he was driving from Taiping to Ipoh with four passengers, three in the back seat and one beside him on the front seat. At the time of the accident, which occurred in broad daylight, he was proceeding along a straight stretch of road just north of Chemor at a speed of between forty and fifty miles per hour. He had just passed a motor lorry going in the opposite direction and when he had done so was presumably on his correct side of the road. Brake marks on the road indicated that about the time he passed this lorry he applied his brakes with considerable force but whether this was done in connection with passing the lorry or in connection with the events that happened immediately afterwards it is impossible to say. In front of him, proceeding in the same direction as himself, was the deceased cyclist who was riding just off or just on the tarred surface of the road, and in front of this cyclist were two boys riding on one bicycle. Coming in the opposite direction was a bus which had stopped to set down a passenger and was travelling slowly. As he passed the deceased cyclist appellant's car came into contact with his bicycle causing him to fall to the ground and sustain a fractured skull as a result of which he died. The appellant in the meantime had completely lost control of his car, it swerved from side to side, the near side back wheel was wrenched off and it came to rest on its hood on the grass verge on its off side of the road.

The defence, for what it was worth, was that just before the moment of impact the cyclist had turned to his off side, and that in consequence the appellant who would otherwise have avoided him was unable to do so. The learned Magistrate, however, to my mind rightly, rejected this defence and for reasons which he has set out and with which I agree came to the conclusion that even if the cyclist did alter his course unexpectedly he could not thereby have brought himself more than a few inches nearer to the car at the moment of impact than he would otherwise have been.

In my opinion, there is not the slightest room for doubt as to what happened. The appellant was driving a heavily loaded car at a speed which though not in itself dangerous was nonetheless considerable. As was shown by the subsequent behaviour of his car, he did not have it fully under control. And yet without